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# Supreme Court of the United States.

OCTOBER TERM, 1973.

No. 73-809.

ANGELO ROSSI, JR., ET AL.,
PETITIONERS,

*v.*

UNITED STATES OF AMERICA,
RESPONDENT.

ON MOTION FOR DEFERRAL OF CONSIDERATION OF PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

**Motion for Leave to File Out of Time Petition for Rehearing.**

MORRIS M. GOLDINGS,
MAHONEY, ATWOOD & GOLDINGS,
500 Boylston Street,
Boston, Massachusetts 02116.

ADDISON C. GETCHELL & SON, INC. - THE LAWYERS' PRINTER - BOSTON

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ON MOTION FOR DEFERRAL OF CONSIDERATION OF PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

**Motion for Leave to File Out of Time Petition for Rehearing.**

The Petitioners herein respectfully move this Court for leave to file out of time their Petition for Rehearing and, as grounds therefor, state the following:

1. On March 25, 1974, this Court entered an order (1) denying Petitioners' Petition for a Writ of Certiorari and (2) denying Petitioners' Motion for Deferral of Consideration of Petition for a Writ of Certiorari.

2. At 2 p.m. April 19, 1974, Petitioners caused to be timely sent to this Court, from its Printer, Addison C. Getchell & Son, Inc., Boston, Massachusetts, forty copies

of its Petition for Rehearing, via Air Express—REA—Receipt No. 73-69-70, attached hereto, which had guaranteed same day delivery to said printers. In addition, REA was notified in writing on the parcel that said parcel had to be delivered before midnight, April 19, 1974.

3. On Monday morning, April 22, 1974, said parcel and said copies of the Petition for Rehearing were received, out of time, by the Office of the Clerk of this Court.

4. On Monday, April 22, 1974, Honorable William J. Brennan, Jr., Circuit Justice for the Third Circuit, approved Petitioners' Application for Suspension of Order Denying Certiorari and Denying Motion to Defer Consideration.

5. Petitioners have diligently timely filed all prior pleadings whereas the United States has filed out of time briefs, which Petitioners have not opposed, both with this Court as regards the instant case and with the Court of Appeals for the Third Circuit in Petitioner's appeals. Nos. 74-1017, 74-1018 and 74-1019, from the denial by the District Court for the District of New Jersey of their Motion for New Trial Upon Newly Discovered Evidence.

Thus, the Brief for the United States in Opposition in the instant case, which was due before this Court on January 10, 1974, was not filed with this Court until March 8, 1974. In addition, the United States Brief for Appellee, which was due before the Court of Appeals for the Third Circuit, in Nos. 74-1017, 74-1018 and 74-1019, on February 21, 1974, was not filed therewith until February 27, 1974.

6. The fact that Petitioners' Petition for Rehearing was filed three days out of time was due to the negligence of the shipper, Air Express—REA, and not to any lack of diligence by Petitioners or their printer.

7. If this Motion for Leave to File Out of Time Petition for Rehearing is denied, the approval granted by

Justice Brennan of Petitioners' Application for Suspension of Order Denying Certiorari and Denying Motion to Defer Consideration will be without effect and Petitioner will stand in potential grave danger of loss of liberty, should the District Court for the District of New Jersey for any reason reverse its approval, granted April 19, 1974, of Petitioners' Motion for Continuation on Bail.

**Conclusion.**

For the reasons set forth above, as well as for the importance of the issue raised on Petitioners' Petition for Rehearing, Petitioners pray that this Court approve their Motion for Leave to File Out of Time Petition for Rehearing.

Respectfully submitted,

MORRIS M. GOLDINGS,
MAHONEY, ATWOOD & GOLDINGS,
500 Boylston Street,
Boston, Massachusetts 02116,
Attorneys for Petitioners.

## Appendix.

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**REA Air Express**

AES-19 (11-71)
Ptd. in U.S.A.

| | | | |
|---|---|---|---|
| Destination Office: Washington DC | Via Final Airport | Date Shipped: 1/19/74 | Hour: 11 A.M. / P.M. |
| Consignee: Michael Kostal / Esquire | | Receipt Number: AE 736970 | |
| Street Address: Supreme Court of U.S. Clerk of Court | Declared Value: $ | RAIL CHARGES | AIR CHARGES |
| Forwarding Office: BOSTON, MASS. 02128 | Code No. | 1st Arpt. | RZ No. 154 |
| Pieces: 1 Box | Article | Nature of Contents | Actual Weight: 1 |
| Dimensions: 10 10 7 3 3 | Dimensional Weight | SCALE NOS. Air / Rail: Orig. / Dest. | Priced by |
| Shipper: Addison & Caldwell | Class: Rail / Air | Paid Beyond: XXX / XX | |
| Address of Shipper or Actual Point of Origin: 160 N Washington St | SHIPPER'S RECEIPT Prepaid Air Express | | |

Value Charge To Airport
Rail Exp. Chgs. To Airport
Value Charge From Airport
Rail Exp. and Other Chgs. From Airport
Total Rail Charges

Air Value Charge
Air Express Charges
Total Air Charges
Total Rail and Air
Other Charges
Total
C. O. D.
C. O. D. Service Charges

GSDS

NOTE—The Company will not pay over $50 in case of loss, or 50 cents per pound, actual weight, for any shipment weighing 100 pounds, unless a greater value is declared [illegible] for each article valued.

Received shipment described hereon, subject to the Air Tariff in effect on the date hereof. Value herein declared by Shipper to be that entered in space hereon, reading, "Declared Value," subject to the terms and conditions of the uniform express receipt on file with the Civil Aeronautics Board and in effect on the date of shipment and to which the parties hereto agree to be bound. (See Reverse side.)

| | Number Pieces | Date | Hour |
|---|---|---|---|
| Campbell | 1 | 1/19/74 | 11 A.M. / P.M. |

for Railway Express Agency, Inc.

GSDS -- is code for guaranteed same day service.